

AMENDED IN SENATE MAY 3, 2001

SENATE BILL

No. 527

Introduced by Senator Sher

February 22, 2001

~~An act to repeal Sections 39004 and 39005 of the Health and Safety Code, relating to air pollution.~~
An act to amend Sections 42400.4 and 43021 of, and to add Sections 42410 and 43023 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 527, as amended, Sher. ~~Ambient air quality~~ *Air pollution: penalties.*

(1) Existing law prescribes various civil penalties that may be imposed by the State Air Resources Board for a violation of specified state board regulations relating to vehicular and nonvehicular air pollution control. Existing law also authorizes any city attorney, with the consent of the district attorney, upon the complaint of the state board, to bring an action for unfair trade practices.

This bill would authorize the state board to impose administrative penalties as an alternative to seeking civil penalties for certain violations. The bill would authorize the state board to impose an administrative penalty up to the maximum amount the state board is authorized to impose as a civil penalty for that violation. The bill would also limit the state board's authority to impose an administrative penalty to a maximum of \$10,000 per day in which there is a violation not to exceed \$100,000 per penalty assessment proceeding for any violation arising from the same conduct. The bill would also provide for administrative review under existing state board administrative hearing procedure regulations, except that this bill would require that the

hearings be conducted by an administrative law judge appointed by the Office of Administrative Hearings. The bill would also provide for judicial review of an administrative hearing in conformance with existing law. The bill would also prohibit the state board from causing an action to be brought by any city attorney against any person upon whom the state board has imposed an administrative penalty.

(2) Existing law also prescribes criminal penalties for a violation of a federally enforceable operating permit issued pursuant to specified provisions of the federal Clean Air Act or for a violation of specified laws under that act relating to stationary sources. Under existing law, the recovery of civil penalties for a violation of specified state laws relating to nonvehicular emission limitations precludes criminal prosecution for the violations under the act. Other existing law, as of January 1, 2003, makes a person who transports, or who provides a vehicle to transport, motor vehicle fuel for a motor vehicle fuel distributor who is not in compliance with specified laws, liable for a civil penalty.

This bill would correct erroneous cross-references and delete an obsolete cross-reference in those provisions.

~~Existing law provides that the reenactment of the law regulating ambient air quality in the state by the Legislature during the 1975-76 Regular Session has no effect on the existence of any air pollution control or air quality management district board, or the terms of any members thereof, or on any order, rule, or regulation of any district or of the State Air Resources Board, unless the order, rule, or regulation is not consistent with the law regulating ambient air quality.~~

~~This bill would delete the above-described provisions concerning the 1975-76 reenactment.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 39004 of the Health and Safety Code is~~
- 2 *SECTION 1. It is the intent of the Legislature in the enactment*
- 3 *of this act to do all of the following:*
- 4 *(a) Provide the State Air Resources Board with an alternative*
- 5 *to pursuing civil penalties through the court system by allowing the*
- 6 *state board to pursue penalties for less significant violations*
- 7 *through an administrative hearing process.*

1 (b) Provide administrative penalty authority only for those
2 categories of violations for which the state board maintains the
3 authority to impose civil penalties.

4 (c) It is not the intent of the Legislature to modify the level of
5 penalty impositions beyond historic levels.

6 SEC. 2. Section 42400.4 of the Health and Safety Code is
7 amended to read:

8 42400.4. (a) In any district where a Title V permit program
9 has been fully approved by the *federal* Environmental Protection
10 Agency, any person who knowingly violates any federally
11 enforceable permit condition or any fee or filing requirement
12 applicable to a Title V source is guilty of a misdemeanor and is
13 subject to a fine of not more than ten thousand dollars (\$10,000).

14 (b) In any district in which a Title V permit program has been
15 fully approved by the *federal* Environmental Protection Agency,
16 any person who knowingly makes any false material statement,
17 representation, or certification in any form or in any notice or
18 report required of a Title V source of a federally enforceable
19 permit requirement, or who knowingly renders inaccurate any
20 monitoring device or method required of a Title V source, is guilty
21 of a misdemeanor and is subject to a fine of not more than ten
22 thousand dollars (\$10,000).

23 (c) The recovery of civil penalties pursuant to Section 42402,
24 ~~40402.1~~, 42402.1, 42402.2, or ~~40402.3~~ 42402.3 precludes
25 prosecution pursuant to this section for the same offense. When a
26 district refers a violation to a prosecuting agency, the filing of a
27 criminal complaint is grounds requiring the dismissal of any civil
28 action brought pursuant to this article for the same offense.

29 (d) Each day during any portion of which a violation of
30 subdivision (a) or (b) occurs is a separate offense.

31 (e) This section shall not become operative in a district until the
32 *federal* Environmental Protection Agency fully approves that
33 district's Title V permit program.

34 (f) This section applies only to violations described in
35 subdivisions (a) and (b) that are not otherwise subject to a fine of
36 ten thousand dollars (\$10,000) or more pursuant to Section
37 42400.1, 42400.2, or 42400.3.

38 SEC. 3. Section 42410 is added to the Health and Safety Code,
39 to read:

1 42410. (a) As an alternative to seeking civil penalties under
2 Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 for
3 a violation of regulations of the state board, the state board may
4 impose an administrative penalty, as specified in this section. Any
5 administrative penalty imposed under this section shall be
6 imposed as an alternative to, and not in addition to, a civil penalty
7 imposed pursuant to this article. No administrative penalty
8 imposed by the state board pursuant to this section shall exceed the
9 amount that the state board is authorized to seek as a civil penalty
10 for the applicable violation, and no administrative penalty
11 imposed pursuant to this section shall exceed ten thousand dollars
12 (\$10,000) for each day in which there is a violation up to a
13 maximum of one hundred thousand dollars (\$100,000) per penalty
14 assessment proceeding.

15 (b) Nothing in this section restricts the authority of the state
16 board to negotiate mutual settlements under any other penalty
17 provision of law that exceeds ten thousand dollars (\$10,000) for
18 each day in which there is a violation of one hundred thousand
19 dollars (\$100,000) per penalty assessment proceeding.

20 (c) The administrative penalties authorized by this section shall
21 be imposed and recovered by the state board in administrative
22 hearings established pursuant to Article 3 (commencing with
23 Section 60065.1) and Article 4 (commencing with Section
24 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17
25 of the California Code of Regulations, except that the hearings
26 shall be conducted by an administrative law judge appointed by
27 the Office of Administrative Hearings.

28 (d) Nothing in this section authorizes the state board to seek
29 penalties for categories of violations for which the state board may
30 not recover penalties in a civil action.

31 (e) If the state board imposes any administrative penalties
32 pursuant to this section, the state board may not bring any action
33 pursuant to, or rely upon, Chapter 4 (commencing with Section
34 17000) of Part 2 of Division 7 of the Business and Professions
35 Code.

36 (f) In determining the amount of any administrative penalty
37 imposed pursuant to this section, the state board shall take into
38 consideration all relevant circumstances, including, but not
39 limited to, those factors specified in subdivision (b) of Section
40 42403.

1 (g) After an order imposing an administrative penalty becomes
2 final pursuant to the hearing procedures identified in subdivision
3 (c), and no petition for a writ of mandate has been filed within the
4 time allotted for seeking judicial review of the order, the state
5 board may apply to the Superior Court for the County of
6 Sacramento for a judgment in the amount of the administrative
7 penalty. The application, which shall include a certified copy of the
8 final order of the administrative hearing officer, shall constitute a
9 sufficient showing to warrant the issuance of the judgment.

10 (h) For any violation that is within the enforcement jurisdiction
11 of both the state board and the districts, the state board may impose
12 an administrative penalty pursuant to this section only if the
13 district in which the violation has occurred has not commenced an
14 enforcement action for that violation.

15 (i) This section is not intended, and shall not be construed, to
16 grant the state board authority to assess an administrative penalty
17 for any category of violation that was not subject to enforcement
18 by the state board as of January 1, 2002.

19 (j) Any administrative penalty assessed pursuant to this section
20 shall be paid to the State Treasurer for deposit in the General
21 Fund.

22 (k) A party adversely affected by the final decision in the
23 administrative hearing may seek independent judicial review by
24 filing a petition for a writ of mandate in accordance with Section
25 1094.5 of the Code of Civil Procedure.

26 (l) This section shall only apply to violations that occur on or
27 after January 1, 2002.

28 (m) On or before January 30, 2005, the state board shall
29 prepare and submit to the Legislature and the Governor a report
30 summarizing the administrative penalties imposed by the state
31 board pursuant to this section for calendar years 2002, 2003,
32 2004, and 2005.

33 SEC. 4. Section 43021 of the Health and Safety Code is
34 amended to read:

35 43021. (a) For purposes of this section, “motor vehicle fuel
36 distributor” means any person who (1) refines, blends, or
37 otherwise produces motor vehicle fuel, or (2) with an ownership
38 interest in the fuel, transports or causes the transport of motor
39 vehicle fuel at any point between a production or import facility

1 and a retail outlet, or sells, offers for sale, or supplies motor vehicle
2 fuel to motor vehicle fuel retailers.

3 (b) Any motor vehicle fuel distributor who conducts business
4 within the state, annually on January 1, shall inform the state board
5 in writing of the distributor's principal place of business, which
6 shall be a physical address and not a post office box, and any other
7 place of business at which company records are maintained or
8 refining activities are conducted.

9 (c) The state board shall supply each complying motor vehicle
10 fuel distributor with a certificate of compliance with this section
11 not later than June 30. The certificate shall be effective from July
12 1 of the year of issuance through June 30 of the following year.

13 (d) All motor vehicle fuel distributors shall maintain complete
14 records of each purchase, delivery, or supply of motor vehicle fuel
15 for a period of not less than two years in the physical locations
16 reported pursuant to subdivision (b) and shall not move the records
17 to another physical location without notifying the state board of the
18 new location. A complete record for each delivery shall consist of
19 not less than a copy, or the information contained therein, of the
20 bills of lading from the refinery or bulk terminal from which the
21 fuel is received, the delivery ticket or receipt showing the location
22 of the fuel at the time of sale, and the invoice showing the
23 purchaser of the fuel. All those records may be kept in physical or
24 electronic format and are subject to inspection and duplication by
25 the state board.

26 (e) Any motor vehicle fuel distributor who intentionally fails
27 to comply with subdivision (b) or (d) is liable for a civil penalty
28 not to exceed one thousand dollars (\$1,000) for each day of
29 noncompliance.

30 (f) No person shall knowingly transport motor vehicle fuel for
31 any motor vehicle fuel distributor who is not in possession of a
32 current certificate of compliance as described in subdivision (c).
33 Any person who transports or provides vehicles to transport motor
34 vehicle fuel for a noncomplying distributor is liable for a civil
35 penalty not exceeding ten thousand dollars (\$10,000) for each day
36 ~~as well as any penalties prescribed by Section 41963.~~ However,
37 any person who transports, or provides vehicles to transport, motor
38 vehicle fuel for a distributor who is in possession of a current
39 certificate of compliance shall not be liable for any penalties under

1 this subdivision or Section 41963 unless that person has specific
2 knowledge of noncompliance.

3 (g) Any retailer who knowingly sells or supplies motor vehicle
4 fuel that was delivered to the retailer by, or on behalf of, a
5 noncomplying motor vehicle fuel distributor is liable for a civil
6 penalty not to exceed ten thousand dollars (\$10,000) for each
7 transaction.

8 (h) Any retailer who sells motor vehicle fuel that does not
9 comply with regulations of the state board, after both oral and
10 written notice to cease have been delivered to the owner, manager,
11 or attendant on duty at the facility, and upon failure to comply with
12 that notice, is subject to the issuance of a cease and desist order by
13 the state board and a penalty of ten thousand dollars (\$10,000) for
14 each day of noncompliance with the cease and desist order.

15 (i) The state board shall annually compile and publish a
16 complete listing of all certified wholesale petroleum distributors,
17 and shall mail a copy to every licensed transporter of petroleum
18 products.

19 (j) This section shall become operative January 1, 2003.

20 SEC. 5. Section 43023 is added to the Health and Safety Code,
21 to read:

22 43023. (a) As an alternative to seeking civil penalties under
23 Chapter 1 (commencing with Section 43000) to Chapter 4
24 (commencing with Section 43800), inclusive, and Chapter 6
25 (commencing with Section 44200), for violation of state board
26 regulations, the state board may impose an administrative penalty,
27 as specified in this section, for a violation of this part, or any rule,
28 regulation, permit, variance, or order of the state board pertaining
29 to vehicular air pollution control except as otherwise provided in
30 this division. No administrative penalty imposed pursuant to this
31 section shall exceed the amount that the state board is authorized
32 to seek as a civil penalty for the applicable violation, and no
33 administrative penalty imposed pursuant to this section shall
34 exceed ten thousand dollars (\$10,000) for each day in which there
35 is a violation up to a maximum of one hundred thousand dollars
36 (\$100,000) per penalty assessment proceeding for any violation
37 arising from the same conduct. This one hundred thousand dollar
38 (\$100,000) maximum penalty limitation does not apply in any
39 judicial proceeding involving violations committed under this
40 part.

1 (b) Nothing in this section restricts the authority of the state
2 board to negotiate mutual settlements under any other penalty
3 provision of law that exceeds ten thousand dollars (\$10,000) for
4 each day in which there is a violation up to a maximum of one
5 hundred thousand dollars (\$100,000) per penalty assessment
6 proceeding.

7 (c) The administrative penalties authorized by this section shall
8 be imposed and recovered by the state board in administrative
9 hearings established pursuant to Article 3 (commencing with
10 Section 60065.1) and Article 4 (commencing with Section
11 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17
12 of the California Code of Regulations, except that the hearings
13 shall be conducted by an administrative law judge appointed by
14 the Office of Administrative Hearings.

15 (d) Nothing in this section authorizes the state board to impose
16 penalties for categories of violations for which the state board may
17 not seek penalties in a civil action.

18 (e) If the state board imposes any administrative penalties
19 pursuant to this section, the state board may not bring any action
20 pursuant to, or rely upon, Chapter 4 (commencing with Section
21 17000) of Part 2 of Division 7 of the Business and Professions
22 Code.

23 (f) In determining the amount of any administrative penalty
24 imposed pursuant to this section, the state board shall take into
25 consideration all relevant circumstances, including, but not
26 limited to, those factors specified in subdivision (b) of Section
27 43031.

28 (g) After an order imposing an administrative penalty becomes
29 final pursuant to the hearing procedures identified in subdivision
30 (c), and no petition for a writ of mandate has been filed within the
31 time allotted for seeking judicial review of the order, the state
32 board may apply to the Superior Court for the County of
33 Sacramento for a judgment in the amount of the administrative
34 penalty. The application, which shall include a certified copy of the
35 final order of the administrative hearing officer, shall constitute a
36 sufficient showing to warrant the issuance of the judgment.

37 (h) This section does not apply to any violation for which a
38 penalty may be assessed pursuant to Chapter 1.5 (commencing
39 with Section 43025).

1 (i) *This section is not intended, and shall not be construed, to*
2 *grant the state board authority to assess an administrative penalty*
3 *for any category of violation that was not subject to enforcement*
4 *by the state board as of January 1, 2002.*

5 (j) *Any administrative penalty assessed pursuant to this section*
6 *shall be paid to the State Treasurer for deposit in the General*
7 *Fund.*

8 (k) *A party adversely affected by the final decision in the*
9 *administrative hearing may seek independent judicial review by*
10 *filing a petition for a writ of mandate in accordance with Section*
11 *1094.5 of the Code of Civil Procedure.*

12 (l) *This section shall only apply to violations that occur on or*
13 *after January 1, 2002.*

14 (m) *On or before January 30, 2005, the state board shall*
15 *prepare and submit to the Legislature and the Governor a report*
16 *summarizing the administrative penalties imposed by the state*
17 *board pursuant to this section for calendar years 2002, 2003,*
18 *2004, and 2005.*

19 ~~repealed.~~

20 ~~SEC. 2. Section 39005 of the Health and Safety Code is~~
21 ~~repealed.~~

